GOVERNMENT OF MYSORE

Food, Civil Supplies & Labour Department

Labour Dispute :—Industrial Dispute between the workmen and the management of M/s. Canara Auto Repairs (Mangalore) (P) Ltd., Kodialbail, Mangalore-3.

Award of the Labour Court, Mangalore published.

Read the following papers :

(1) Letter No. A/ID/10/70/71-72, dated 21st June 1971 from Sri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

22nd March, 1971

Reference (ID) (LCM) No. 10 of 1970.

Present :

Mohd. Hameeduddin Khan, B.Sc., LL.B., **Presiding Officer.**

Between :—

The workmen represented by the Secretary, S. K. Automobile and Engineering Workers' Union, Mangalore. **—First Party**

and

The management of M/s. Canara Auto Repairs (Mangalore) (P) Ltd., Kodialbail, Mangalore-3. **—Second Party**

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. Canara Auto Repairs (Mangalore) (P) Ltd., Kodialbail, Mangalore-3 referred it under Section 10(1)(c) of the Industrial Disputes Act, 1947 vide Order No. FCL 70 LLD 70, dated 1st April 1970 to this Labour Court at Mangalore for adjudication on the following points of dispute :—

"I. Are the workers of Canara Auto Repairs (Mangalore) Private Ltd., Mangalore-3, justified in demanding :—

(i) Annual increment at the rate of 0--50 paise in the wages.

(ii) 3 sets of uniforms each consisting of a shirt, a pant (in khaki or blue colour) and a pair of shoes.

II. If not, to what relief are the said workers entitled to ?"

2. On receipt of the reference it was registered as Reference (ID) (LCM) No. 10 of 1970 on the file of this Court, and notices were issued to both the parties to file their claim and counter statements. The first party is represented by Sri Prabhakar Ghate, and the second party is represented by Sri K. Shashidhar Rao and Mr. Eric Sequiera. This is to be noted that on the hearing dated 6th May 1970 notice of the first party union was returned unserved. But Mr. Rosario appeared and requested for time. Therefore, next date was fixed as 6th June 1970 for authorisation and claim statement. On 6th June 1970 on behalf of the first party workers Sri J. Ramesh and Sri Jayaram were present. On that day Sri Prabhakar Ghate undertook to file authorisation on behalf of the first party and sought time to file the claim statement. Mr. Eric Sequiera was present for the second party. On 17th June 1970 Sri Prabhakar Ghate filed authorisation to represent the first party workmen. Mr. Eric Sequiera was present for the second party. Sri Prabhakhar Ghate took time to file the claim statement stating that he did not receive the entire records from Sri Srinivasan. On 29th June 1970 Sri Prabhakar Ghate filed the claim statement. After taking two adjournments, on 31st July 1970 Mr. Eric Sequiera filed the counter statement of the second party. Additional issues were framed that day apart from the points of disputes as under :—

1. Whether the present dispute is an industrial dispute being supported by a substantial number of workmen of the second party and the Secretary of Motor and General Mazdoor Sangh, Felix Pai Bazaar, Mangalore-1 is competent to represent the first party workmen in this reference ?

2. Whether the second party is one of the group companies owning fleet of passenger and goods transport vehicles or whether it is a separate legal entity ?

3. Whether the recommendations made by the transport wage board are binding on the second party establishment ?

4. Whether the wages paid to the first party workmen in the establishment of the second party are low and the lowest wages received is Rs. 2--70 per day and the highest is Rs. 4 per day inclusive of dearness allowance ?

5. Whether the wages paid to the first party workmen in the second party establishment are lower than those prevalent in the establishments of similar industry in the region, i.e., South Kanara ?

6. Whether three sets of uniforms and a pair of shoes as claimed by the first party workmen in their claim statement are being supplied in other workshops of similar nature ?

7. Whether the second party has no financial capacity to meet the demands made in the order of reference ?

8. What award ?

Thereafter the next date was fixed as 12th August 1970 for the evidence of the first party. After many adjournments on the hearing dated 20th January 1971 one witness was examined by the first party as W.W. 1 and one document was got marked by the second party as Exhibit M. 1. On 23rd January 1971 two witnesses were examined by the first party as W.W. 2 and W.W. 3 and three documents were got marked as Exhibits W. 1 to W. 3 On 27th January 1971 two witnesses as W.W. 4 and W.W. 5 were examined by the first party and one document as Exhibit W. 4 was got marked. On 5th February 1971 the first party examined three more witnesses as W.W. 6 to W.W. 8. On 2nd March 1971 another witness was examined by the first party as W.W. 9 and got marked Exhibits W. 5 and W. 6 The copy of the Resolution of the union was got marked by consent as Exhibit W. 7 that day. The evidence of the first party was closed that day, and the case was posted to 6th March 1971 for the evidence of the second party. Taking one adjournment, on 15th March 1971 Mr. Eric Sequiera stated that the second party does not want to produce any evidence and wants to argue on the materials on record. On 16th March 1970 arguments of the learned representatives for the parties on the additional issue No. 1 were heard.

3. The facts contained in the claim statement of the first party are that the second party in an automibile repair workshop. It is one among the group of companies owning fleets of passenger and goods transport vehicles. It employees about twenty workmen. The first party workmen put up three demands namely, (a) annual increments of 50 paise is the basic daily wages, (b) grant of three sets of uniform annually and (c) 20 per cent bonus for the year 1968-69. Out of these three, the Government has been pleased to refer the first two demands for adjudication by this Court. It is stated that except the two foremen the other workers are paid on daily rated basis. Their wages are low. The lowest wages received

are Rs. 2-70 per day and the highest is around Rs. 4 per day inclusive of dearness allowance. The foremen are getting less than Rs. 200 per month inclusive of dearness allowance. These wages are prima facie too low considering the skilled nature of their work. Most of them have put in service of over seven years. Even the minimum salary recommended by the transport Wage Board for the fitters, mechanics, etc., is Rs. 155 per month. Viewed from whatever angle the workmen are paid too meagre a salary by the second party. These wages are lower than the prevalent wages in establishments of similar nature in this region. The demand of the first party workmen for an annual increase in their basic wages of 50 paise per day is fully justified. It is stated that the nature of the work in the second party workshop is such that the workers come in contact with oil, grease, acids, etc., which soil their clothings. On account of this not only there is more wear and tear of the dress but the workmen have to spend a lot to replace the worn and torn out dress. It is necessary that they be supplied with three sets of uniforms each consisting of a shirt and a pant made of Khaki or blue colour cloth. It is stated that it is also necessary that they be supplied with a pair of shoes every year as they have to work in a place full of iron particles. The uniforms and shoes are being supplied in other workshops also. It is stated that the second party has financial capacity to meet the above demands. Lastly it was prayed that after due enquiry the second party may be directed to meet the above demands in full and that the costs of this reference may be awarded to the workmen.

4. In the written statement filed by the second party it was pleaded that the dispute referred to this Court is not an industrial dispute because substantial number of workmen are not supporting the demand and the Secretary of Motor and General Mazdoor Sangh, Felix Pai Bazaar, Mangalore-1, is not the representative of the workmen. The Government referred this dispute at the instance of the Secretary, S. K. Automobile and Engineering Workers' Union, Mangalore, and hence the Secretary of the present Union, Sangh, is not competent to represent the workmen. It is stated that it is not admitted that substantial number of workmen supported the demand. Hence the reference will have to be rejected on that ground alone. The burden is on the workmen to prove that the demand was a concerted action of the substantial number of workmen. As this Court has to decide now the additional issue No. 1 only, the remaining facts mentioned in the written statement of the second party are not reitereted here.

5. Sri Prabhatkar Ghate, the learned representative for the first party, in support of the first part of the additional issue No. 1 argued

that to prove that this is an industrial dispute supported by substantial number of workmen, the first party examined nine workers, and the evidence of the workers is to the effect that they authorised the Secretary of Motor and General Mazdoor Sangh by a resolution, copy of which is marked as Exhibit M. 7, to conduct this case on behalf of the first party, and that the workers had placed their demands with Srinivasan, Secretary of the previous Union to be placed before the second party management. This fact is proved by their evidence. Therefore, their cause must be taken to be supported by a majority of the workmen under the second party. Hence it must be treated as an industrial dispute. With reference to Exhibit W. 17 he argued that 14 employees of the second party who were present resolved to authorise the Secretary of the union to file the claim statement and also to prosecute the case in this Court. In view of this resolution and evidence given by all these nine workmen, the additional issue No. 1 is liable to be answered in favour of the first party and as against the second party. On the other hand, Sri K. Shahidhar Rao, the learned representative for the second party, argued that some of the wienesses have not produced the receipts in proof of their being members of the previous union, and therefore they cannot be said to be members of the previous union, i.e., Srinivasan's union. That apart there is no evidence to show that W.W. 4 and W.W. 6 were members of Srinivasan's union. He contended that whatever was written by Srinivasan according to the evidence, was only a demand as per W.W. 1. With reference to the evidence of W.W. 8 he argued that he stated that Srinivasan wrote the demands on a paper. Exhibit M. 1 is the letter signed by Srinivasan to the second party dated 30th September 1969. There is no record to show that Srinivasan was authorised to sign the demands. He pointed out the discrepancies occurring in the statements of the witnesses as some have stated that what Srinivasan wrote was the authorisation, and some have stated that it was demand. Relying upon the ruling reported in 1962 (II) LL SC 93 he contended that the first party has failed to prove that it was an industrial dispute supported by a substantial number of workmen of the second party. Therefore, this reference is not maintainable.

6. I have given my anxious consideration to the able arguments advanced on either side on the additional issue No. 1. The additional issue No. 1 consists of two parts. The first part involves the point as to the present dispute being an industrial dispute being supported by a substantial number of workmen of the second party or not, and the second party involves the point as to the Secretary of Motor and General Mazdoor Sangh, Felix Pai Bazaar, Mangalore which is not the same union which had sponsored the cause of the first party workmen on the basis of which the reference was made to this Court for adjudication. The union which had sponsored the

cause of the first party workmen was S. K. Automobile and Engineering Workers' Union, Mangalore represented by its Secretary as what the Government order indicates.

7. I shall deal with the first part of this additional issue No. 1 first. Exhibit M. 1 is the letter issued by the S. K. Automobile and Engineering Workers' Union, Maidan Road, Mangalore-1 dated 30th September, 1969 under the signature of the Secretary addressed to M/s. The Canara Auto Repairs (Mangalore) Private Ltd., Kodialbail, Mangalore-3. It reads :—

> "As desired by your workmen we herebelow forwarded their demands—
>
> 1. That all the workmen (including monthly rated) shall be granted annual increments at the rate of Rs. 0-50 paise in their basic daily wages.
>
> 2. All the workmen shall be granted 3 sets of uniforms each consisting of a shirt, a pant in kaki or blue colour and a pair of shoes.
>
> 3. All the workmen should be granted bonus at the rate of 20 per cent of their earnings for the year 1968-69.
>
> "We request you to consider these demands and concede in full within fifteen days from the date of this demand notice, failing which we shall seek the intervention of the conciliation officer".

This letter indicates that these demands were made as desired by the workmen of the second party, thus this letter speaks to the workmens' desire to place these three demands before the second party, and the Secretary of the S. K. Automobile and Engineering Workers Union being obliged to incorporate these demands in his letter Exhibit M. 1. In my view letter itself was quite sufficient to hold that the present dispute was sponsored by the workmen of the second party, but it being silent to indicate as to how many workers had desired to place these demands before the second party management through the said union and it being also silent as to whether they had passed any resolution to that effect in writing authorising the Secretary of the said union to place these demands or they had orally anthorised and requested the Secretary of the said Union to place these demands with the second party, I will have to look into the evidence of W.W. 1 to W.W. 9.

8. W.W. 2, Mr. David Wilson, deposed that he is working as a painter in Canara Auto Repairs, Mngalore. He is working there

since May 1964. The dispute now before this Court is regarding increment, bonus and uniforms. They requested Sri Srinivasan, Secretary of the S. K. Automobile & Engineering Workers' Union to secure them the abovedemands from the management. One day after their duty was over he himself and other employees of their factory went to the office of the union and requested the Secretary Srinivasan to approach the management on their behalf and get them the above demands. It was is the month of September 1966. Srinivasan wrote their demands on a paper, read over the contents to them and they signed it. He has stated that, that the union is not in existence now. Now they are the members of Motor & General Mazdoor Sangh. They have requested Sri Ghate to take up their case in the Labour Court. In cross-examination he has stated that he became a member of the union belonging to Srinivasan in 1967. He has paid at the rate of Rs. 3 per year upto 1969 as membership fee. He produced two receipts of subscription, dated 7th August 1967 and 26th April 1969 and they are marked as Exhibits W. 1 and W. 2. He has stated that they themselves decided about the demands. Ramesh W.W. 1 went to the office of the union of Srinivasan about 6 p.m. on that day. They also went along with him. First Ramesh, W.W. 1, talked with Srinivasan about the demans. Along with Ramesh they were in all fifteen workers. They agreed to what Ramesh told Srinivasan about the demands. They did not inform Srinivasan that they would be coming on that day. Srinivasan also did not tell them to come to his office on that day. He or any one of them fifteen people did not write anything about the demands to Srinivasan. Mr. Srinivasan wrote the demands in English on a paper. Srinivasan had not signed that demand. It was written in the demands drafted by Srinivasan that they must be paid increment of 50 paise per year and they be paid more then four per cent bonus every year and they must be supplied with uniforms. Except these they did not make any other demands. Srinivasan read over these demands to them. He has stated that Soans has read it. He further denied the suggestion by stating that it is not correct to say that they fifteen of them did not go to Srinivasan and signed on the demands. He further denied the suggestion by stating that it is not true to suggest that they did not go to Srinivasan and that Srinivasan himself signed the demands and sent them to the management. There cannot be any dispute in my view with regard to his being member of the previous union, i.e., S. K. Automobile & Engineering Workers' in view of the receipts of membership fee produced by him and which are marked as Exhibits A. 1 and A. 2. He has supported the evidence of W.W. 1.

9. W.W. 1, Sri J. Ramesh, though he has not produced any receipt of his union, yet deposed that he was a member of Srinivasan's union, the name of which was South Kanara Automobile

Workers' Union, Mangalore. They were members in that union since 1967. They fifteen workers of the second party factory were also members of that union. He has stated that there are about thirty employees in the second party concerned. The demands which are before this Court are with regard to grant of increment, uniform and payment of bonus. These demands were raised before the management through Srinivasan, Secretary of the former union. One day Srinivasan called all fifteen of them to the office of the union and took the signatures of all the fifteen on a blank paper They requested Srinivasan that their demands for increments, uniforms and bonus should be placed before the management. In the middle of September 1969 they had gone to the union. In the blank paper on which their signatures were taken their demands were also written. That union is closed now. Even the office is closed now. He does not know where the records of that union have gone now. The union ceased to exist even before the reference was made by the Government to this Court for adjudication. Srinivasan is not in Mangalore now. He does not know his whereabouts. In cross-examination he has stated that the demands were written in the original paper. He signed that paper after the demands were written on that paper. Srinivasan wrote the demands. The demands were written in English. He has not read the demands but they were interpreted to them in Kannada from English. Srinivasan interpreted the demands to them in Kannada. Srinivasan knows Kannada a little and he speaks Tamil. After Srinivasan read over the demands to them in Kannada they signed that paper. The paper on which they have signed and the demands which were written were sent to Kanara Auto Repairs, the second party. He has stated that he has got receipts of the membership fee paid to Srinivasan's union, and he can produce them for the year 1968-69. All of them fifteen persons went together to the former union. Sheena Poojary and Soans have read those demands and said that what Srinivasan had translated to them in Kannada was correct. Both Seena Poojary and Soans know English. This witness identified the signature of Srinivasan on Exhibit M. 1 marked as Exhibit M. 1 (a). In my view, the evidence of both the witnesses W.W. 1 and W.W. 2 is sufficient to prove that fifteen workmen of the second party raised the demands aforesaid through the Secretary, S. K. Automobile & Engineering Workers' union. The paper on which they have signed and contained their demands could not be produced by them, their former union not being in existence now and the whereabouts of the Secretary of that union not being known.

10. The evidence of W.W. 1 and W.W. 2 is also supported by the evidence of W.W. 3, Mr. Wilfred D'Sa who deposed that he is working in Canara Auto Repairs from the year 1965 as a welder.

They have raised a demand with the management with regard to increments, uniform and bonus. They requested Srinivasan to put forth the above demands on their behalf with the management. They have given in writing to Srinisavan that he should raise the above demands with the management on their behalf. After their duty hours in the evening they all workers went to the office of the union of Srinivasan and authorised him in writing to raise the above demands. He was a member of Srinivasan's union. Now that union is not in existence. Now they are members of the Bharatiya Masdoor Sangh. Since the Srinivasan's union is not in existence, they have authorised Sri P. Ghate to represent them in the Labour Court. In cross-examination he has stated that he is a certificate holder in Polytechnic. He is a welder since 1665. He has stated that he became member of Srinivasan's union in September 1969. He has produced the membership receipt market as Exhibit W. 3. He further stated that they went to Srinivasan's union in the month of September 1969, but he does not remember whether it was in the first half or in the second half of that month. He has stated that Ramesh, W.W. 1, was their spokesman on that day. They had not placed the demands with the management by themselves but through Srinivasan. Srinivasan had written the demands in English and they signed the demands after they were read over to them. He has not read the demands himself. Srinivasan read over the demans to them in Kannada. He denied the suggestion by stating that it is not correct to say that they fifteen workers never went to Srinivasan's union and requested him to raise the demands and that they never signed the demands.

11. The version of W.W. 1 to W.W. 3 is also supported by the evidence of W.W. 4 to W.W. 9; Sri K. Gopala Shetty, Sri K. Bhaskara, Mr. Jefri D'Souza, Mr. Bartaram Soans, Sri U. Krishna and Sri P. Seena Poojary recpestively.

12. W.W. 4 deposed that they had raised demands regarding payment of bonus, increment and uniforms. They all went to the office of Srinivasan's union and requested him that he should get for them their demands pertaining to increment, dress and bonus. They had gone to the said union in the middle of September, 1969. There their demands were all writtn on a paper. One Sri Soans read the contents and then they all signed the said paper. Only their demands were written on the said paper. Srinivasan's union is not in existence now. He has stated that he was a member of Srinivasan's union. In cross-examination he has no doubt stated that he has no membership receipt of Srinivasan's union and that he has no documentary evidence to show that he was a member of Srinivasan's union besides his oral evidence. But no oral evidence was adduced by the second partly against this version of his to rebut

his evidence that he was a member of the previous union. His failure to produce any documentary evidence in support of his being member of the said union cannot be taken as a serious infirmity in his evidence.

13. W.W. 5 deposed that formerly he was a member of South Kanara Automobile & Engineering Workers' Union, Mangalore, belonging to Srinivasan. They had raised a demand regarding increment, bonus and uniforms to them. The demands were raised through Sri Srinivasan's union. They requested Srinivasan to place the above demands on their behalf with the management. Srinivasan told them that they should give in writing that he should place the demands on their behalf. Srinivasan himself drafted the letter and they all signed the said letter. They went to Srinivasan's office on or about 15th of September 1969. Srinivasan's union is not in existence now. He has stated in cross-examination that he became member of Srinivasan's union in 1967. He has got the membership receipt for the year 1968 marked as Exhibit W. 4. He has lost the subsequent receipt. Their annual subscription was Rs. 3. He has stated that they told their demands and then Srinivasan wrote their demands and after they were read over to them in Kannada, they signed the demands.

14. W.W. 6 Mr. Jefri D'Souza, deposed that formerly he was a member of Srinivasan's union. While he was in Srinivasan's union they had put up three demands, viz., annual increment, uniforms and bonus. They had requested Srinivasan to get them these three demands from the second party. In the month of September, 1969 they went to Srinivasan's union in this connection. Srinivasan took down what they said and they signed the same. This was written down on a paper. Their three demands were written on that paper. Srinivansan's union is not in existence now. In cross-examination he has stated that he is a fitter in the second party. Before going to Srinivasan's union they had decided about their demands. This was about five or six days prior to meeting Srinivasan. Their discussions about the demands were not recorded before going to Srinivasan. He has stated that he has lost the membership receipt. There were sixteen persons along with him. It was one Ramesh one of them stated their demands to Srinivasan.

15. W. W. 7, Mr. Bartharam Soans, deposed that formerly he was a member of S. K. Automobile & Engineering Workers' Union. Now he is a member of Mazdoor Sangh. They had placed the demands which are the subject matter of the dispute before this Court while they were members of the former union. They placed the demands through the former union. After consulting amongst themselves they went to the office of the union and requested the Secretary

to place their demands before the management. This was in the month of Septemer, 1969. They all went in the evening after their duty was over. They requested Srinivasan to get them their three demands, viz., bonus, increment and uniforms. He got an authorisation letter from them for this purpose. Before signing the said letter he had gone through the contents of it. That letter was addressed to the union. In that letter they had written that their demands regarding bonus, increment and uniforms be placed before the management and if the management failed to accede to their demands the matter may be taken up before the conciliation officer. Srinivasan's union is not in existence now. Though it is true that this witness has used the word 'authorisation', yet this does not make any difference because according to him that letter also contains the demands as what the other witnesses have spoken to also. He has stated in cross-examination that they had not placed the demands with the management but they placed their demands through the union. He has stated that Srinivasan wrote the demands in English on the paper as stated by Ramesh and Srinivasan himself translated the matter written on a sheet of paper to them in Kannada. He has stated further that Srinivasan himself after writing the demands in English translated the demands in Kannada and none of them translated the contents in Kannada. This witness had gone though the demands.

16. W.W. 8, Sri U. Krishna, deposed that he was a member of S.K. Automobile & Engineering Workers' Union. The demands that are now before this Court were raised when he was a member of that union. One day they all went to the office of Srinivasan and requested him that their demands of bonus, increment and uniform be placed before the second party. Their request was written by Srinivasan and afterwards they signed that paper.

17. W.W. 9, Sri P. Seena Poojary, deposed that formerly he was a member of Srinivasan's union. In respect of the demands included in the reference they had requested Srinivasan to secure them the said demands, viz., increment, annual bonus, and uniforms. This was in the month of September, 1969. About fifteen-sixteen workers of the second party including himself had gone to the office of Srinivasan's union in September 1969 for this purpose. Now that union is not in existence. He has stated that Sri J. Ramesh talked to Srinivasan on their behalf and placed these demands. Because they appointed J. Ramesh to be the spokesman of their workers. There is nothing in writing to show that J. Ramesh was appointed as their spokesman but from 1967 onwards they have asked him to represent them. He produced two receipts marked as Exhibits W. 5 and W. 6 dated 24th June 1968 and 26th April 1969. He has stated that they had authorised Srinivasan to place their demands.

before the management but they had not asked him to send that writing containing the demands. By that writing they had authorised Mr. Srinivasan requesting him to get their demands from the management. By the wording "authorised" used by this witness, the factum of the workers having placed their demands through the Secretary of the said union cannot be negatived.

18. From the evidence of W.W. 1 to W.W. 9 on the whole it is found that they fifteen who are the workers under the second party placed these three demands of theirs before the second party through Sri Srinivasan, Secretary of their former union, S. K. Automobile & Engineering Workers' Union, Maidan Road, Mangalore. There is no evidence adduced on behalf of the second party to show as to what is the actual strength of the workmen of the second party. But according to W.W. 1 the strength of the workmen under the second party is about thirty, and out of this, fifteen have taken up the cause collectively for securing these three demands from the second party management through their former union, S. K. Automobile & Engineering Workers' Union, Mangalore, represented by its Secretary Sri Srinivasan. That means to say that 50 per cent of the workers supported this cause, and 50 per cent in my view can constitute a substantial number of workmen required to make a dispute as an industrial dispute. Support of 25 per cent of workmen even can convert an individual dispute into an industrial dispute as what has been held by the Supreme Court in the latest decision reported in 1970 Lab.I.C. Sc 574 (workmen of Indian Express Newspaper Private Ltd., Appellants v. The Management of Indian Express Newspaper Private Ltd., Respondent). The facts of that case were that a dispute relating to two workmen in a newspaper establishment in Delhi arose in July 1959. Thereafter the dispute was espoused by the Delhi Union of Journalists, an outside Union, whose membership was open to the members of the newspaper establishment concerned. The dispute was referred to the Industrial Tribunal in August 1961. The question arose whether the dispute was an industrial dispute (and not an individual dispute) as the Delhi Union of Journalists not being exclusively a Union of the workmen employed in the newspaper establishment concerned, had espoused the said cause. It was found that about 25 per cent of the working journalists of the newspaper establishment concerned at least were members of the Delhi Union of Journalists. It was clear from the evidence that at the material time there was no union of working journalists employed by the newspaper establishment concerned. The Supreme Court in that case held that—

> "The Delhi Union of Journalists could be said to have a representative character qua the working journalists employed in the newspaper establishment concerned, and the dispute was transformed into an "industrial dispute".

But in the present case 50 per cent of the workmen of the second party having supported collectively their cause for raising an industrial dispute as regards their three demands afore-mentioned, the present dispute will come under the definition of 'industrial dispute' given in Section 2(k) of the Industrial Dispute Act, 1947. This will be my answer to the first part of the additional issue No. 1.

19. Now remains the second part of the additional issue No. 1. The evidence of the W.W. 1 to W.W. 9 indicates that their former Union is not in existence and now they have become the members of Bharatiya Mazdoor Sangh and they by way of resolution contained in Exhibit W. 7 have authorised the Secretary of the said Sangh to prosecute this case on their behalf. When the union which had sponsored the cause of the workers has ceased to exist after the reference was made to the Labour Court for adjudication, the reference can be continued by the representative of another union of which those workers have now become members. Therefore, in my view Sri Prabhakar Ghate, the Secretary of Bharatiya Mazdoor Sangh is quite competent to prosecute the present dispute. This will be my answer to the second part of the additional issue No. 1.

20. After the disposal of this additional issue No. 1, the remaining issues are left to be disposed of on merits after taking evidence of the parties. Hence put up on 1st April 1971 for the evidence of the first party on the points of dispute and additional issues 2 to 7.

MOHD. HAMEEDUDDIN KHAN,

Presiding Officer,

22nd March, 1971. Labour Court, Mangalore.

21st June 1971.

21. This award is passed in continuation of the Order dated 22nd March, 1971 disposing of the additional issues 1 and 2. The full facts of the case of the first party have been already mentioned in the said order. Therefore, there is no necessity to reitarate them here again. But the facts of the relevant portion of the counter statement of the second party which are not incorporated in the aforesaid order are now given. It is stated in the counter statement that it is denied that the second party employs twenty workmen in the establishment. It is also denied that the second party is one of the group companies owning flect of passenger and goods transport vehicles. There is no groupism or secretarianism as alleged. The

second party being a limited company registered under the Companies Act, it has separate legal entity. It is stated that the dispute is, whether the workmen of Canara Auto Repairs are justified in demanding annual increment at the rate of 50 paise in their basic wages and 3 sets of uniforms. It is stated that the workmen shall prove that the second party company grants annual increments and then the justifiability of their demand of increase at 50 paise per day in their basic wages. It is stated that the question of capacity and the principle of industry-cum-region basic have been discussed at length in the previous award passed in 1969 by this Court when the demand of dearness allowance (which is also 'wage') was rejected. This decision is binding on both the parties. It is stated that it is denied that wages paid to the workers are low and the lowest wage received is Rs. 2.70 per day and the highest is Rs. 4 per day inclusive of D.A. It is pleaded that the recommendations made by the Transport Wage Board are not binding on this establishment which is not a transport undertaking but is carrying on the work of automobile repairs. Further, the said recommendations are not statutory. It is stated further that it is denied that the most of the workers have put in more than seven years of service. It is further pleaded that the workers are put to strict proof to show that the wages paid in this establishment are lower than those prevalent in establishment of similar nature in this region. Similar establishment being similar in capital, business, profit and other factors as decided by the Supreme Court. It is stated that the workmen raised their demand on 30th September, 1969 demanding the increment of 50 paise per day in basic wage. Almost all the workers have received the increment of more than 50 paise per day with effect from 1st December 1969. The management has granted the increment though the circumstances did not warrant. It is stated that the facts stated in para 6 are denied. It was prayed that hence the demand of three sets of uniforms and a pair of shoes be rejected. It is stated further that the burden is on the first party workmen to prove that the uniform and shoes are being supplied in other workshops of similar nature. Further, it is stated that it is denied that the second party has financial capacity to meet the above demands. It is prayed that since the demands were substantially met by the second party in so far as the increase in basic wages is concerned, the demand and the reference be rejected with costs. In view of these plea, the additional issues 3 to 8 were framed along with the additional issues 1 and 2 which were disposed of already.

22. Now I proceed to consider the additional issue No. 3 at the outset. In this respect Sri P. Ghate, the learned representative for the first party, did not argue. But Sri K. S. Rao, the learned representative for the second party, contended that the recomendations of the wage board for transport service by the Government

remained as recommendation alone. These recommendations are not statutory. They cannot be enforceable in view of the ruling of our Hon'ble High Court reported in XXIV F.J.R. Mys. 243(253). This issue must therefore be answered in favour of the second party and against the first party. In my view this contention of Sri K. S. Rao is sustainable in the light of the ruling of our Hon'ble High Court reported in XXIX F.J.R. Mys. 243 (Mysore Sugar Co., Ltd. v. B. K. Manavendra and others) wherein it is held that—

> "The report of a Central Wage Board merely contains the recommendations of the Board for implementation by the employer. It is neither an award nor a settlement nor a contract conferring any enforceable right on any employee. If an employer implements the recommendation of the Board by entering into an agreement with the workmen, it is not the recommendations of the Wage Board that confer any right on the workmen. It is the terms of the agreement between the employer and the workmen that confer enforceable rights on the latter. The recommendations of the Wage Board cannot, therefore, be the basis of an application under section 33-C(2) of the Act."

As the recommendations of the Wage Board for transport service have not taken the shape of statutory provisions, in my view, they cannot be taken into consideration for fixing the wages of the first party workmen and that apart the question of fixation of wages as per recommendations of the wage board is not the point for consideration in this case. The demand to be considered is, whether the annual increase of 50 paise in the basic wage as contained in point No. 1 of the reference is justified or not. Hence this issue is answered in the terms that the recommendations made by the transport wage board are not binding on the second party establishment.

23. This is to be noted here that after the disposal of the additional issues 1 and 2, the first party examined, the witnesses W.W. 1, Sri J. Ramesh and W.W. 6 Mr. Jefri D'Souza i.e., they were recalled and examined further who had been already examined on 20th January 1971 and 5th February 1971 respectively in connection with the additional issues 1 and 2. Besides them the one more witness Mr. N. J. Rebello as W.W. 10 was examined on merits of the case. The second party examined one witness Sri K. S. Pai as M.W. 1 and got marked Exhibits M. 2 to M. 6.

24. Now I come to the additional issue No. 4. Though in the counter statement the lowest wage received by a workman as

Rs. 2.70 per day and the highest wage being Rs. 4 per day inclusive of dearness allowance was denied, yet the evidence of W.W. 6, Mr. Jefri D'Souza given on 18th May 1971 in this respect was not rebutted. Jefri D'Souza as W.W. 6 in his statement made before this Court on 18th May 1971 in continuation of his previous statement dated 5th February 1971, deposed that he is a fitter in Canara Auto Repairs, Mangalore, the second party. He joined the second party in the year 1951. His basic salary now is Rs. 2.60 plus D.A. Rs. 1.75 total Rs. 4.35 per day. He was getting Rs. 3.96 per day since 1965. With regard to the lowest wage he has stated that at present the lowest paid wage in their establishment is Rs. 3 per day, and is paid to the permanent employees. The names of the employees who get Rs. 3 per day are Messrs. Chandrahasa, Ravindra and Jayarama. The service put in by Chandrahasa is about eight years. The other two employees, viz., Jayarama and Ravindra have put in a service of three years each. When the claim statement in this case was filed in this Court, these three workers were getting about Rs. 2.75 per day. Thus in view of his evidence which is not rebutted, the additional issue No. 4 is answered in the terms that the wages paid to the first party workmen in the establishment of the second party were Rs. 2.75 per day and the higher wage was Rs. 3.96 per day inclusive of dearness allowance before the increments granted to them in December, 1969 and in 1970 as evident from the statement Exhibit M. 6 showing the increments granted and which fact has been also deposed to by M.W. 1. M.W. 1 in examination-in-chief has stated that Exhibit M. 6 is the statement showing the increments given to the workers of the second party in the year 1969 December. In 1970 December the D.A. has been increased. Mr. Soans is getting Rs. 15 D.A. more. So also P. Ramachandra Bhat and Sundara Shetty and K. Sheena Shetty get Rs. 15 D.A. more. Also Somashekar K. gets Rs. 15 more as D.A. The rest, namely, Jefri D'Souza, P. Sheena Poojary, J. Ramesh, Ivon Amanna, Babu Shetty K., K. Gopala Shetty, David Wilson and U. Krishna are all getting 25 paise more in D.A. per day with effect from December, 1970.

25. Now the additional issues 5 and 7 and the Point No. I (i) of the points of dispute are considered which are interconnected with each other. The contention of Sri K. S. Rao in connection with these additional issues 5 and 7 and the point No. I (i) of the points of dispute is that the net profit for 1967 as per Exhibit M. 2 (a) was Rs. 6,826 and if provision for income tax is added to it, it will be Rs. 19,800, and the tax would be about Rs. 9,000 and odd. The net profit for the year 1968 according to Exhibit M. 3 (a) was Rs. 1,032-63, and if provision for income tax Rs. 2,500 is added, the total would be Rs. 3,532, and the actual tax will have to be deducted from the gross profit. For 1969 the net profit as per

Exhibit M. 4 (a) was Rs. 2,394 and if provision for income tax Rs. 4,500 is dded, the gross profit would become Rs. 6,894-97, and the actual tax will have to be deducted from the gross profit. For 1970 as per Exhibit M. 5 (a) the net profit was Rs. 4,452-92 and if provision for income tax Rs. 6,800 is added, the total gross profit would be Rs. 11,252-92. He argued that these figures show that the second party is not a progressing and prospering concern. The capital invested is Rs. 50,000. The Supreme Court held in many cases that the investor should get a reasonable profit of 8.5 per cent. He rgued that if 8.5 per cent is taken as dividend that means Rs. 4,250 would be necessary for the purpose of return on paid up capital. So if this amount is deducted from the gross profit, practically the balance would be about Rs. 1,000 or so in the year 1970. In the year 1968 there was nothing and so also in 1969. In 1667 there was some profit. But for two years, i.e., 1968 and 1969 there was no profit at all. He argued that actually a portion of the demand has been met by the second party by given increments to the workers in 1969 and 1970 as spoken to by M.W. 1 and it is not controverted by the other side. So the demand of an increase of 50 paise in the basic wage cannot stand. These issues must be answered in favour of the second party and against the first party workmen. He contended that the first party examined only one worker W.W. 10, Mr. N. J. Rebello, but he did not throw any light on the issue that the wages drawn by them are higher than the wages drawn by the workers of the second party. Though he has spoken to the effect that the workmen in their concern are drawing more than what the workers in the second party are drawing, yet he has not produced any documentary evidence to substantiate the fact that in their concern they are paid more wages than the workers under the second party concern are paid. He cited the ruling reported in 1964 (I) LLJ 380 and argued that in view of this decision the evidence of W.W. 10 cannot be given any credence or weight, in the absence of documentary evidence. With regard to what are comparable concerns he cited the ruling reported in 1962 (II) LLJ 744, and argued that in the light of this ruling of the Supreme Court, the first party workmen have failed to prove that in similar concerns wages are paid more than what the wages are paid to the workmen in the second party. He also cited the rulings reported in 1966 (I) LLJ 744 and 1967 (II) LLJ 55 (59) and contended that these issues 5 and 7 and the point No. I (i) must be decided in favour of the second party and against the first party. On the other hand, Sri P. Ghate, the learned representative for the first party,argued that the demands of the first party are only two, viz., annual increment of 50 paise in the basic wages and the second demand is for the supply of three sets of uniforms consisting of pant, shirt and a pair of shoes. He argued that Exhibit M. 6 is the list of increments given from 1969 which shows that some were

given 50 paise and some 30 paise and some 25 paise and one worker 14 paise and two workers were not given anything and one worker got Rs. 5 per month. He argued that M.W. 1 has admitted in his evidence that the increment was given in 1966 and thereafter only in 1969. Thus there is a gap of three years during which the workmen of the second party were paid increment. The second party has got the capacity to pay annual increment of 50 paise to each of the workmen. Because the second party has got the reserves of Rs. 31,000 as evident from the balance sheet, Exhibit M. 5, under liabilities. The value of fixed assets in 1968 was Rs. 99,000 as per Exhibit M. 3. The same has been increased to Rs. 1,30,303 as per Exhibit M. 5. He argued that these figures show that the company is prospering and has got sound financial capacity to meet the demands of the first party workmen. He contended that the Supreme Court has said that the gross profit has to be taken into consideration for wage structure. He cited the ruling reported in 1966 (I) LLJ 1 in this connection. He argued that even if the gross profit for four years before providing for income tax is to be taken into account, the total would be Rs. 41,000 and odd, and the average would work out to Rs. 10,126 and odd per year. He argued that the directors have also expressed their view with regard to the progress of the second party concern in their report to the shareholders as per Exhibit M. 5. He calculated the amount of 50 paise per employee and contended that the burden for 25 employees for 300 days in a year will be only Rs. 3,750. The wage bill from 1967 to 1969 was Rs. 36,000, but in 1970 it was raised to Rs. 42,000 on account of increment, bonus, etc. In spite of this increase of Rs. 6,000 the gross profit has gone to Rs. 11,000 in 1970. In spite of heavy depreciation of Rs. 36,150 for the year 1970, the profit has gone to Rs. 11,000 in the year 1970. Lastly he has stated that he is prepared to restrict the payment of 50 paise increase in pay for four years only from 1969 to 1972, and not for an indefinite period. In reply Sri K. S. Rao contended that in view of his argument made above the demand of increase of 50 paise in the basic wage is liable to be rejected with costs.

26. I have given my anxious consideration to the able arguments advanced on either side, in this respect. The point for consideration being a demand for an increase in wage, i.e., annual increment, it is incumbent on this Court to follow the principle of industry-**cum**-region as laid down by the Supreme Court in various decisions.

27. In 1963 (I) LLJ SC 108 (Hindustan Times Ltd., vs Their Workmen) at pages 112 and 113 it has been observed that :—

> "For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-**cum**-region basis, and of giving careful consideration to the ability of the industry to pay."

In that case the fixation of scale of pay, dearness allowance, adjustments, leave wages gratuity and the retrospective effect of the award were the points involved. In 1962 (II) LLJ SC 744 (French Motor Car Company Ltd., vs. Their workmen) it is held that :—

> "It is now settled that the principle of industry-**cum**-region has to be applied by an industrial court when it proceeds to consider questions like wage structure, dearness allowance and similar conditions of service. In applying, that principle industrial courts have to compare wage scale prevailing in similar concerns in the region with which it is dealing, and generally speaking, similar concerns would be those in the same line of business as the concern with respect to which the dispute is under consideration."

In 1962 (I) LLJ SC 302 (Williamsons (India) Private Ltd., vs. Its workmen) it is observed that :—

> "Further in considering the question of comparable concerns, the tribunals should bear in mind all the relevant facts in relation to the problem. The extent of the business carried by the concerns, the capital invested by them, the profits made by them, the nature of the business carried on by them, their standing, the strength of their labour force, the presence or absence and the extent of reserves, the dividends decclared by them and the prospects about the future of their business these and all other relevant facts have to be borne in mind."

In 1964 (I) LLJ SC 380 (Workmen of Balmer Lawris & Co., Ltd., **vs.** Balmer Lawris & Co., Ltd., and another) it is held that :—

> "The question as to which concerns are comparable concerns for the purposes of fixation of wage scales should not be determined on the oral interested testimony of the parties. It should be determined on the basis of documentary evidence. Such question is determined in the light of material facts and circumstances which are

generally proved by documentary evidence. What is the total capital invested by the concerns, what is the extent of its business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concerns, what is its standing in the industry to what it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is comparable with another in the mattr of fixing wages. Such questions cannot be decided obviously on the interested testimony either of the workmen or of the employer and his witnesses."

In 1664 (I) LLJ SC 342 (Greaves Cotton & Co., Ltd., and others vs. Their workmen (Greaves Cotton and Allied Companies Employees' Union) it is held that :—

"The basis of fixation of wages and dearness allowance is industry-**cum**-region. Where there are a large number of industrial concerns of the same kind in the same region, it would be proper to put greater emphasis on the industry part of the industry-**cum**-region principle as that would put all concerns on a more or less equal footing in the matter of production costs and therefore in the matter of competition in the market and this will equally apply to clerical and subordinate staff whose wages and dearness allowance also go into calculation of production costs. But where the number of comparable concerns is small in a particular region and therefore the competition aspect is not of the same importance, the region part of the industry-**cum**-region formula assumes greater importance particularly with reference to clerical and subordinate staff. In other words, the principles which emerge from the decisions in 1962-II L.L.J. 352 (S.C.) and 744 (S.C.) is that in applying the industry-**cum**-region formula for fixing the wage scales the tribunal should lay stress on the industry par of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small, it is the region part of the industry-**cum**-region formula which assumes importance particularly in the case of clerical and subordinate staff as there is not much difference in

the work of such class of employees in different industries.

In 1964 (1) LLJ SC 451 (Workmen of Jessop & Co., Ltd., vs. Jessop & Co., Ltd., and others) it is held that :—

> "It is well settled that wages including wage scales are fixed on region-**cum**-industry basis, and one of the reasons behind this principle is that concerns of more or less the same standing in the same industry should have as nearly as possible same wages so that they might stand on a par with on another in the matter of competition. Otherwise if disparate rates of wages are fixed in a particular concern, which are much higher than the prevailing rates of wages in concerns of similar standing in the same industry, it will be put at a disadvantage when it comes to compete in the market in the sale of its product. It is for this reason that when scales of pay are being fixed that tribunals look at what are called comparable concerns in framing wage-structure."

28. The principles that emerge from all the above rulings are that in an industrial dispute for fixation of pay scales, dearness allowance, etc., the industry-**cum**-region principle should be followed, secondly that comparison should be made with comparable concerns only, and thirdly that to prove a concern to be a comparable concern, the relevant factors must be proved by documentary evidence only and not by the oral testimony of the interested employees or the employer. In the light of the principles which emerge from these rulings, I now proceed to consider the evidence of the first party which consists of the evidence of W.W. 6, W.W. 1 and W.W. 10 only, so far as the merits of the case are concerned.

29. W.W. 10, Mr. N. J. Rebellow, deposed that he is working in Rodrigues Garage as a fitter. He is working there from the last six years. Six years back when he joined the said workshop his salary was Rs. 115 per month. Now he is getting Rs. 175 per month. He has received an increment of Rs. 10 every year for the last six years. Automobile repair work is being undertaken in Rodrigues Garage. All the employees in their workshop are given increments every year. The minimum increment given is Rs. 10 only. In cross-examination he has stated that the maximum drawn by a fitter is Rs. 190 per month and minimum being Rs. 140 per month. They are repairing the vehicles driven by diesel. They are also repairing motor cars. They have got the crown pinion and polishing repair machines. The turner works on that machine. He is drawing Rs. 175. Mechanic is drawing Rs. 225 per month. The

minimum by a mechanic is Rs. 140. He has no proof to show that he is drawing at present Rs. 175. He has stated that he has no records to show that other workers are paid at the rates mentioned above except his oral statement made in this Court. Thus from his evidence it is determined that in the said garage a fitter draws a minimum of Rs. 140 per month and the maximum is Rs. 190 per month, and that his present salary is Rs. 175 per month, and that the turner gets Rs. 175 per month, and the mechanic gets Rs. 140 as minimum. But there is not documentary evidence to substantiate the rates shown by him to be in fact correct. In the absence of any documentary evidence of Rodrigues Garage, it cannot be held that Rodrigues Garage is a similar comparable concern and that the rates shown by this witness W.W. 10 are actually paid to the workers, in the light of the ruling of the Supreme Court reported in 1964 (I) LLJ SC 380 referred to above wherein much stress has been laid to prove similar comparable concerns by documentary evidence only. Thus the first party workmen have failed to prove that Rodrigues Garage is a similar comparable concern to the second party concern. Hence, the evidence of W.W. 10 cannot be given any evidence. However, overlooking this aspect of the point, I now turn to the question as to whether the second party concern has financial capacity to meet the burden of the annual increase of 50 paise in the basic wage of the employees under the second party establishment, which according to the calculation given by Sri P. Ghate for the first party for 25 employees will amount to Rs. 3,750 and odd a year. No doubt it is true in view of the decision of the Supreme Court reported in 1966 (I) LLJ SC 1 (Ahmedabad Millowners' Association and others v. Textile Labour Association, Ahmedabad) that gross profit is more important to be taken into consideration in such matters of wage structure. It is observed at page 31 that :—

> Incidentally, it is the figure of gross profit which is more important because it is not disputed that wages payable to the employees are a first charge, and all other liabilities take their place after the wages.

In the same ruling it is held that :—

> "On the other hand, in trying to recognize and give effect to the demand for a fair wage, including the payment of dearness allowance to provide for adequate neutralization against the ever-increasing rise in the cost of living, industrial adjudication must always take into account the problem of the additional burden which such wage-structure would impose upon the employer and ask itself whether the employer can reasonably be called upon to bear such burden."

This principle may be applicable to the present case also to determine whether the second party can bear the burden if the demand of an annual increase of 50 paise in the basic wages of the first party workmen is awarded to them. In the said ruling it is further observed that :—

> "The problem of constructing a wage structure must be tackled on the basis that such wage-structure should not be changed from time to time. It is a long range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face? These and similar other considerations have to be carefully weighed before a proper wage-structure can be reasonably constructed by industrial adjudication **vide** Express Newspapers (Private), Ltd., and another **v.** Union of India and other (1961—1 L.L.J. 339)."

It is further held in this ruling that :—

> "Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations which industrial adjudication would make in regard to the construction of a wage structure. A broad and overall view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it; and in determining such capacity, allowance must be made for a legitimate desire of the employer to make a reasonable profit."

30. The net profit and gross profit for every year from 1967 to 1970 have already been referred to in the arguments of Sri K. S. Rao and Sri P. Ghate. There is no necessity to reiterate them here again in detail. Even if the gross profits for four years according to Sri P. Ghate are taken to be Rs. 41,000 and odd, and the average to be taken as Rs. 10,126 and odd per year, it cannot be said that the second party concern has a sound financial capacity to meet the demand of Rs. 3,750 and odd every year. Because on the capital

of Rs. 50,000 invested if 8.5 per cent as reasonable profit is deducted, there will be nothing sufficient left with the second party to meet the demand. Because the net income for 1967 was Rs. 6,826-20 only after provision for income tax of Rs. 13,000 as per Exhibit M. 2(a). As per Exhibit M. 3(a) the net profit for the year 1968 was Rs. 1,032-63 only after provision for income tax of Rs. 2,500, and as per Exhibit M. 4(a) the net profit for the year 1969 was Rs. 2,394-97 only after provisin for incme tax of Rs. 4,500, and as per Exhibit M. 5(a) the net profit for the year 1970 was Rs. 4,452-92 only after provision for income tax of Rs. 6,800. The appropriations recommended by the Directors are as follows according to Exhibit M. 5 :—

"Net profit for the year ..	4,452—92
Add : Balance as per last Balance Sheet.	173—40
	4,626—32
Dividend at 9 per cent subject to deduction of tax ..	4,500—00
Balance to be carried forward ..	126—32"

Thus the second party, in my view, has no financial capacity having regard to its present financial position which is determined from Exhibits M. 2 to M. 5. Therefore, it cannot be said that the second pary has capacity to meet the demand of an annual increase of 50 paise in the basic wage of every employee. No doubt in the Directors' report contained in Exhibit M. 5 it is stated that the progress of the company is satisfactory. The job receipts have increased and the hire collected by running lorries have also improved. In addition to repairs and lorry operation the company has started undertaking lorry body building. But this view does not mean to say that the second party has financial capacity to meet such demands of Rs. 3,750 and odd every year. That apart the second party has already given increments to its workers in December, 1969 and 1970 as evident from Exhibit M. 6 and the evidence of W.W. 1. Having regard to these recent increments awarded, a further increase in the basic wage of the employees cannot be ordered. It cannot be the aim of the social justice to put such a heavy pressure on the employer to put him in an embarrassed stated and to compel him to close the industry being unable to bear the heavy expenditure without any prospects of reasonable profit in future. That apart such closures of industries would become a further cause for the serious unemployment of the working class in the country. So viewed from any angle, the emphatic argument of Sri P. Ghate that the second

party has financial capacity to meet this demand does not weigh with the Court and hence it is held untenable. Hence the additional issues 5 and 7 are disposed of in the terms that the first party failed to prove that the wages paid to the first party workmen in the second party are lower than the wages paid in the establishments of similar industry in the region, i.e., South Kanara, and further failed to prove that the second party has financial capacity to meet this demand of annual increase of 50 paise in the basic wage. The point No. I (i) of the points of dispute is answered in the terms that, the demand of annual increment at the rate of 50 paise in the basic wage is not justified.

31. Now I turn to the additional issue No. 6 and the point No. I(ii) of the points of dispute. It is frankly conceded by Sri P. Ghate that the first party did not lead any evidence to prove that in other similar concerns three sets of uniforms are supplied to the workmen working in the workshops. He fairly conceded this in the course of argument, but his contention is that in view of the nature of the work in which the dress of the workers gets soiled, this demand should be considered from the point of view of necessity. In support of this contention of his he relied upon the ruling reported in 1969 (I) LLJ Punjab & Haryana 674. He argued that according to M.W. 1 there are thirteen permanent workers and twelve to thirteen temporary workers altogether there are about twenty five workers including temporary and permanent. He contended that at least two sets of uniforms must be supplied if not three sets, and that it would cost not more than Rs. 50 each with a pair of shoes, per workmen per year. On the other hand, Sri K. S. Rao in this connection contended that the first party workmen have failed to establish the additional issue No. 6, that in similar concerns uniforms are provided to the workmen in the workshop. Therefore, this demand cannot be met. In my view this demand to the extent of supply of two sets of uniforms consisting of two pants, two shirts (in khaki or blue colour) and one pair of chappel to each of the permanent employees working in the workshop will be quite reasonable as the expenses borne on the supply of uniforms can be charged on the concern under miscellaneous expenses concerning purchase of machines or spare parts or other tools, implements, and supply of uniforms, because this fact cannot be denied that the workers who work in the workshop and who have to go beneath the vehicles sometimes to attend to repairs, their clothes get naturally soiled, and this fact has been admitted by M.W. 1 also. In cross-examination he has stated that the clothes of the workmen working in the workshop get soiled while at work. W.W. 6, Mr. Jefry D'Souza, also deposed at page 2 in his statement made on 18th May 1971, that their clothes get spoiled because of the greaze and oil falling on their clothes, as they have to go beneath the vehicles sometimes. Therefore, they

demand the supply of uniform to them. Similarly, W.W. 1, Sri J. Ramesh, in his statement made on 18th May 1971 deposed that they are not supplied uniforms by the second party. The second party workshop undertakes automobile fitting work, crankshaft grinding and reboring work. Because of this work their dress gets spoiled and torn also as they have sometimes to go underneath the lorries to perform their work. In cross-examination he has stated that he has separate dress of his own to work in the workshop and he does not work putting on his dress on which he comes to the workshop. In my view for the supply of uniform it is not necessary to consider whether the second party concern has capacity to meet this demand or not; because it can be treated as one of the essential expenditures in running an automobile workshop, and this would incur an expenditure of over Rs. 500 per year even if Rs. 40 per head for two pants and two shirts (in khaki or blue colour) and one pair of chappel for the thirteen permanent employees is taken into account. But for the temporary employees the supply of uniform is not considered, in my view, to be justified. In a case of demand for supply of uniform to the workmen in a cement company the High Court of Punjab and Haryana reported in 1969 (I) LLJ 674 (Associated Cenment Companies, Ltd., v. Industrial Tribunal, Punjab and others) upheld the decision of the Tribunal granting uniforms to workmen in the packing plant, coal gang, ropeway, crane, sample boys and those employed for repairs in raw mills, cement mills, coal mills and welders, turners, painters, shift fitters and cooks. In my view the contention of Sri P. Ghate is sound in this respect that the demand of supply of uniform must be considered from the point of view of necessity and not from the point of view that in similar concerns uniforms are supplied or not. Hence, the additional issue No. 6 and the point No. I(ii) of the points of dispute are answered in the terms that the demand of the permanent employees who are thirteen in number is justified to the extent of supply of two sets of uniforms consisting of two pants and two shirts (in khaki or blue colour) and one pair of chappel, and that the demand for the supply of three sets of uniforms consisting of a shirt, a pant (in khaki or blue colour) and a pair of shoes is unreasonable, unjustified and exorbitant and further that the temporary employees are held not entitled to the supply of uniform.

32. Now remains the additional issue No. 8 and the point No. II of the points of dispute. In view of the findings on the additional issues 5, 6 and 7 and point No. I(i) and (ii) of the points of dispute, the permanent employees of the second party who are thirteen only in number are held entitled to the supply of two sets of uniforms consisting two pants, two shirts (in khaki or blue colour) and one pair of chappel every year from the year 1971, and that the temporary employees who are twelve or thirteen in number are held not entitled to the supply of any set of uniform. This will be my

answer to the additional issue No. 8 and the point No. II of the points of dispute. In view of the findings on the additional issues 5 to 8 and the point Nos. I(i) and (ii) and II of the points of dispute, I make the following award :—

AWARD

The reference is answered in the terms that, the demand of the workers of Canara Auto Repairs((Mangalore) Private Ltd., Mangalore-3 for annual increment at the rate of 50 paise in their basic wages is unjustified, and that the second demand with regard to supply of three sets of uniforms is justified to the extent of only two sets of uniforms consisting of two pants, two shirts (in khaki of blue colour) and one pair of chappel so far as the thirteen permanent employees are concerned. The temporary employees who are twelve or thirteen in number are held not entitled to any set of uniform. The above said thirteen permanent employees are held entitled to get two sets of uniforms consisting of two pants, two shirts (in khaki or blue colour) and one pair of chappel every year from the year 1971. In the circumstances of this case, the parties shall bear their respective costs of this reference.

MOHD. HAMEEDUDDIN KHAN,

Presiding Officer,
Labour Court, Mangalore.

Mangalore,

21st June, 1971.